

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-219617

DATE: August 1, 1985

MATTER OF: Datametrics Corporation

DIGEST:

1. Protest alleging that other offerors do not qualify as manufacturers or regular dealers under the Walsh-Healey Public Contracts Act is dismissed because an agency's determination concerning the status of an offeror under that Act is subject to review by the Small Business Administration (if a small business is involved) and the Department of Labor, not GAO.
2. Protest alleging a possible violation of a solicitation's evaluation provision is dismissed for failure to state the legal and factual grounds of the protest where the protest does not indicate what the evaluation provision provides or how it would be violated.
3. Protest alleging that the protester had insufficient time to prepare its proposal is dismissed as untimely because it was not filed prior to the time set for receipt of initial proposals.

Datametrics Corporation protests the award of a contract to anyone other than itself under solicitation No. F42600-85-R-0384, issued by the Ogden Air Logistics Center, Hill Air Force Base, Utah. The solicitation was for a quantity of Minuteman line printers. Datametrics says that specified companies and others that do not manufacture printers should be eliminated from the competition because an award to any of them would violate the Walsh-Healey Public Contracts Act, 41 U.S.C. §§ 35-45 (1982), and an evaluation provision of the solicitation. Datametrics also complains that it did not receive a complete copy of the solicitation in time to prepare its proposal adequately.


We dismiss the protest.

The Walsh-Healey Public Contracts Act requires an offeror seeking to enter into a supply contract with the government to represent that it is either a manufacturer of, or a regular dealer in, the supplies to be furnished under the contract. Whether an offeror actually is a manufacturer or regular dealer, however, is a matter to be determined in the first instance by the contracting agency, subject to review by the Small Business Administration (if a small business is involved) and the Department of Labor. G&B Chemical Corp.--Request for Reconsideration, B-218012.2, Feb. 7, 1985, 85-1 CPD ¶ 163. Our role in a protest that challenges the legal status of an offeror under the Walsh-Healey Act is limited to considering whether the contracting agency has complied with procedural requirements. Pacific Sky Supply, Inc., B-217226, et al., Jan. 28, 1985, 85-1 CPD ¶ 111. Since Datametrics does not allege that proper procedures have not been followed here, we will not consider this aspect of the protest. See Bid Protest Regulations, 4 C.F.R. § 21.3(f)(9) (1985).

Further, although Datametrics alleges that an award to a nonmanufacturer would violate an evaluation provision of the solicitation (which it also characterizes as a "program directive"), the firm does not indicate what the provision says or otherwise explain how the provision would be violated. We think, therefore, that the firm has failed to comply with section 21.1(c)(4) of our Regulations which requires a protest to include "a detailed statement of the legal and factual grounds of protest including copies of relevant documents." Thus, this aspect of the protest also will not be considered. 4 C.F.R. § 21.1(f).

Finally, with respect to the protester's contention that it did not have sufficient time to prepare its proposal, this alleged solicitation impropriety was apparent prior to the closing date for receipt of initial proposals and therefore should have been raised prior to that time. 4 C.F.R. § 21.2(a)(1).

The protest is dismissed.


Ronald Berger
Deputy Associate
General Counsel